Calendar No. 862

99TH CONGRESS
2d Session

SENATE

REPORT
99-413

TO PROTECT THE INTEGRITY AND QUALITY OF CERTAIN REACHES OF THE HENRY'S FORK OF THE SNAKE RIVER, ID

AUGUST 6, (legislative day, AUGUST 4), 1986.—Ordered to be printed

---

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2635]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2635) to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho and for other purposes, having considered the same, reports favorably thereon without amendments to the text and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 5, after the word "Protection", insert "Act".
2. On page 1, line 7, following "section 3" insert "and section 4".
3. On page 2, line 4, strike "cited" and insert "sited".
4. On page 2, line 13, strike "2973):" and insert "2973) or the subsequent relicensing of said project:".
5. On page 2, line 18, insert the following and re-number the existing section 4 as section 5:

> SEC. 4. The prohibition in section 2 of this Act shall not apply to the relicensing of the Ponds Lodge Hydropower project (FERC project numbered 1413).

6. On page 3, strike lines 9 through 12 and insert:

> (b) For the purposes of any Federal law authorizing an express or implied appropriation or reservation of water for any Federal purpose, the provisions of this Act (other than this subsection) shall be deemed not to exist.

71-010 O

S313-34

PURPOSE

As ordered reported, S. 2635 would prevent the development of new hydroelectric facilities (with the exception of a proposal utilizing an existing dam) on an approximately 60.9 mile reach of the Henry's Fork of the Snake River in Idaho. The bill would prohibit the Federal Energy Regulatory Commission from taking any action, other than denial, on any application for a license (with the exception noted above and also on an existing project), preliminary permit, exemption or any further action on an issued preliminary permit for hydroelectric power development on or adjacent to the designated reach of the river.

BACKGROUND

Henry's Fork is a tributary of the upper reaches of the Snake River located in the extreme eastern corner of Idaho near the Montana/Wyoming border. The river flows south and west within the boundary of the Targhee National Forest from its origin at Henry's Lake to its confluence with the Snake River near the city of Rexburg. Land ownership along the river is predominantly national forest with State and private ownerships as well. Recreational use of the river is heavy, including float boating, camping, sightseeing, and fishing; fly fisherman claim that the river is the finest stream in the country for large rainbow trout. There has been significant summer home development as well as commercial facilities catering to the sportsman and recreation user. U.S. Route 20 parallels much of the length of Henry's Fork and there is public access at several points along the river. About 7 miles of the river flows through Harriman State Park. Several applications for preliminary permits and an application for a license for the development of hydroelectric sites on this reach of Henry's Fork have been filed with the Federal Energy Regulatory Commission. Many local residents as well as interested non-residents would like to preserve the free flowing character of the river which is accomplished under this Act.

Enactment of S. 2635 would not alter the existing management of lands adjacent to Henry's Fork or impose additional Federal regulation on the area, but it would protect the river from impoundment and hydroelectric development.

LEGISLATIVE HISTORY

S. 2635 was introduced on June 26, 1986 by Senators McClure and Symms. Legislative reports from the Department of Agriculture, the Federal Energy Regulatory Commission, and the Office of Management and Budget were requested on June 29, 1986. A hearing before the Senate Subcommittee on Water and Power of the Energy and Natural Resources Committee was held on August 11, 1986, at which time the Federal Energy Regulatory Commission offered technical amendments and the Department of Agriculture did not object to enactment of S. 2635.

A companion measure, H.R. 5190, was introduced by Congressman Craig on July 17, 1986, and was referred to the House Committee on Energy and Commerce. A provision, based upon H.R.

2569, introduced by Congressman Stallings designating a segment of Henry's Fork as a "study river" under the Wild and Scenic Rivers Act was included in H.R. 4350, which passed the House on April 8, 1986. H.R. 4350 was referred to the Energy and Natural Resources Committee and is pending before the Subcommittee on Public Lands, Reserved Water and Resource Conservation.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on August 14, 1986, by a unanimous vote of a quorum present, recommended that the Senate pass S. 2635, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop*	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman	
Mr. Rockefeller	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

1. Technical.
2. Conforming.
3. Technical.
4. As introduced, S. 2635 could be interpreted as prohibiting the relicensing of the Island Park Project. This amendment would allow the project to be relicensed.
5. The current license for the Ponds Lodge project expires on October 31, 2004. As introduced, S. 2635 could be interpreted as prohibiting the relicensing of the project. This amendment would allow the project to be relicensed.
6. Clarifying.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 2635 has been requested but was not received at the time the report was

filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2635.

The bill is not a regulatory measure in the sense of imposing Government-established standards or signficant economic responsibilities on private individuals and businesses. However, it should be noted that the bill does place certain criteria on the issuance by the Federal Energy Regulatory Commission of a license for the Island Park Dam Hydropower project (FERC project numbered 2973).

No personal information would be collected as a result of the enactment and implementation of S. 2635. Therefore there would be no impact on personal privacy.

Little, if any, additional paperwork would result from enactment of S. 2635.

EXECUTIVE COMMUNICATIONS

On June 29, 1986, the Committee requested legislative reports on S. 2635 from the Department of Agriculture, the Federal Energy Regulatory Commission, and Office of Management and Budget. The legislative reports have not yet been received. The Committee will have these reports printed in the Congressional Record when they are received. Set forth are the statements presented by Mr. F. Dale Robertson, Associate Chief, Forest Service, Department of Agriculture and Associate General Counsel Mr. Christopher J. Warner, Federal Energy Regulatory Commission, at the hearing before the Subcommittee on Water and Power on August 11, 1986.

STATEMENT OF
F. DALE ROBERTSON, ASSOCIATE CHIEF
FOREST SERVICE
U. S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate

On S. 2635, a bill "To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes.

August 11, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to have the opportunity to present the Department of Agriculture's views on S. 2635, a bill "To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes."

The Department of Agriculture does not object to the enactment of S. 2635.

The effect of S. 2635 would be to prohibit the Federal Energy Regulatory Commission (FERC) from approving any hydroelectric project on the Henry's Fork of the Snake River including issuance of any further permits on projects under preliminary permits.

The bill would not affect the appropriation or reservation of water nor the jurisdiction over waters of the Henry's Fork. Neither would it change water rights or valid existing permits or licenses except for the prohibitions against granting FERC licenses and permits. However, the Commission would not be prohibited from acting on an application for license filed for the Island

Park Dam Hydropower project provided it does not significantly or permanently alter streamflow, habitat, water temperature and quality.

The affected portion of the Henry's Fork runs about 61 miles from Henry's Lake to the backwaters of Ashton Reservoir. All but about 10 miles flow through the Targhee National Forest. In the Forest Plan and Environmental Impact Statement, the Targhee National Forest analyzed characteristics of eligibility and recommended that the portion of the Henry's Fork within the Forest boundary from Big Springs to Warm River be further studied for possible inclusion in the National Wild and Scenic Rivers System. We have testified in the House in support of legislation to designate the Henry's Fork as a Wild and Scenic Study River. It is an outstanding stream for fly fishing for large rainbow trout. The river is prime habitat for eagles, osprey, swans, and other wildlife.

While we would prefer to evaluate resource tradeoffs through the Wild and Scenic Rivers study process, consistent with our Forest Plan, we do not object to the enactment of S. 2635, because it would protect the river from certain federally licensed hydroelectric projects similar to Section 7 of the Wild and Scenic Rivers Act. As a congressionally designated Wild and Scenic Study River, these prohibitions would be in effect for a period of up to 3 years after the study report is submitted to Congress. Rivers that are subsequently designated as National Wild and Scenic Rivers receive permanent hydroelectric project prohibitions. While this is not the only protection afforded to rivers by that Act, S. 2635 would protect the Henry's Fork's free flowing characteristics and fisheries resources.

We appreciate the opportunity to offer our views on H.R. 2635. I would be pleased to answer questions concerning our testimony.

STATEMENT OF

CHRISTOPHER J. WARNER
ASSOCIATE GENERAL COUNSEL
LEGISLATION, REGULATION, AND CONGRESSIONAL AFFAIRS
OFFICE OF THE GENERAL COUNSEL
AND
RICHARD T. HUNT
DIRECTOR OF THE OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

BEFORE THE

SUBCOMMITTEEE ON WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

AUGUST 11, 1986

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to appear before you to discuss S. 2635, a bill to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River in Idaho. With one exception, the bill would prohibit the Federal Energy Regulatory Commission from taking any action, other than denial on any application for a license, preliminary permit, or exemption, or any further action on an issued preliminary permit, for hydroelectric projects on designated sections of the Henry's Fork.

We are appearing before you as technical witnesses, and our comments are not intended to represent the views of the Commission.

S. 2635 does not create any problems of a technical nature for the Commission. It would appear to prohibit totally any future hydroelectric development by anyone on the Henry's Fork or its tributaries within one-half mile of its confluence with the Henry's Fork, from Henry's Lake to the backwaters of Ashton Reservoir. The bill would preclude any authorized hydroelectric construction because it explicitly disallows issuance of any preliminary permit, license, or exemption from licensing. In addition it would preclude unauthorized hydroelectric construction, since it does not exclude the waterway from the Commission's jurisdiction under the Federal Power Act, and thus would leave intact the Commission's enforcement power to protect against unauthorized construction. If this bill were enacted, additional legislation repealing or amending these provisions would be required before any future hydroelectric development on the designated reaches at the site could be authorized.

Enactment of S. 2635 would require certain administrative steps, since it would prohibit the Commission from taking any additional action on preliminary permits already issued for sites within the river sections designated in the bill. The Commission would have to inform the holders of existing preliminary permits who would be affected by the legislation that it would be unable to grant a license for their proposed projects if they chose to file a license application. After such notification, permit holders might elect to surrender their permits, but the

Commission would not require surrender. If, however, permit holders did not fulfill the requirements of their permits after being notified of the bill's provisions, the Commission could cancel those preliminary permits.

Section 3 of S. 2635 states that the bill's prohibition on licensing shall not apply to an application for license for Project No. 2973, but that the license may be approved only if the FERC determines that certain changes in the physical properties and quality of the Henry's Fork will not occur as a result of the project. The license application for Project No. 2973 has received public notice and Federal and state agencies and members of the public have provided comments on the proposed project. The Commission's staff is continuing its processing of the license application.

The attached chart shows pending applications and issued preliminary permits in the Henry's Fork basin, and how they would be affected by enactment of S. 2635.

HENRYS FORK BASIN
As of August 1, 1986

Filing Type	Project Number	Project Name	Applicant / Licensee	Stream / River	Potential In KW	Affected by Proposed Bill
I. APPLICATIONS FOR LICENSE:						
	2973	Island Park	Fall River Rural Elec. Coop.	Henrys Fk, Snake River	4,800	Exempt
	3991	Cross Cut Div	Energenics Systems, Inc.	Henrys Fk, Snake River	1,754	No 1/
II. APPLICATIONS FOR PRELIMINARY PERMITS:						
	9998	St. Anthony Canal	North Fork Power Partnership	St. Anthony Canal	800	No 1/
III. ISSUED PRELIMINARY PERMITS:						
	8516	Upper Teton	Energy Gap Inc.	Teton River	5,700	No 1/
	8750	Bitch Creek	Felt Associates	Bitch Cr, Teton River	350	No 1/
	9315	Sheep Falls	Sheep Falls Associates	Henrys Fk, Snake River	4,150	Yes
	9445	Warm River	Great Western Power & Light Co.	Warm R, Henrys Fk, Snake	4,500	
	9662	Henrys Fork I	Henrys Fork Conservationists I	Henrys Fk, Snake River	2,650	Yes
	9665	Henrys Fork II	Henrys Fork Conservationist II	Henrys Fk, Snake River	3,550	Yes
	9853	George 2	Arktech, Inc.	Henrys Fk, Snake River	3,098	Yes
	9885	Upper Falls River	Environmental Energy Company	Falls River	4,500	
	9890	Up & Lw Mesa Falls	Arktech, Inc.	Henrys Fk, Snake River	12,500	Yes

1/ These projects are located in the Henry's Fork River basin. However, they are not within the designated reaches where development is prohibited.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law would be made by the bill, S. 2635, as reported.

○